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No. 1019

IN THE

Supreme Court of the United States

PETER S. SARELAS,

Petitioner,

vs.

STEPHANOS G. ROCANAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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No.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Peter S. Sarelas, prays that a Writ of Certiorari be issued to review the final judgment of the United States Court of Appeals for the Seventh Circuit. Petitioner's timely Petition for Rehearing in the United States Court of Appeals for the Seventh Circuit was denied on January 18, 1963.

OPINION BELOW.

The opinion of the Court of Appeals is reported in full in 311 F. 2d 36. It is printed herein as Appendix A.

Documents and Papers Transmitted with Petition.

Certified copies of the following filed in the United States Court of Appeals, Seventh Circuit, with nine (9) additional copies:

1. Petitioner's Brief and Appendix.
2. Respondent's Brief and Appendix.
3. Petitioner's Reply Brief.
4. Petitioner's Petition for Rehearing.
5. Respondent's Answer to Petition for Rehearing.
6. Certified copy of the Opinion rendered by the United States Court of Appeals for the Seventh Circuit.
7. Certified copy of the judgment of Court of Appeals, entered on December 21, 1962.
8. Certified copy of the Order entered on January 18, 1963, denying Petition for Rehearing.

JURISDICTION.

The final judgment of the United States Court of Appeals for the Seventh Circuit, affirming the dismissal by the District Court, was entered on December 21, 1962 (Appendix B, *infra*, p. 4a). The petitioner filed a timely petition for rehearing, which was denied on January 18, 1963 (Appendix C, *infra*, p. 5a).

The petitioner therefore invokes the jurisdiction of this Court under 28 U.S.C.A. Section 1254(1). In addition, the petitioner invokes the original jurisdiction of this Court under the Constitution of the United States, Article III, Section 2 and under 28 U.S.C.A. Section 1251(b)(1).

The petitioner invoked the jurisdiction of the District Court under the provisions of U.S.C. Title 28, Section 1351 and Section 1343; and under the United States Constitu-

tion and particularly Amendment XIV, Section 1, and the laws of the United States, Title 42, U.S.C., Sections 1985(2)(3), 1986, 1988; Title 18, U.S.C., Section 241; Title 28, U.S.C., Sections 1331 and 1343.

QUESTIONS PRESENTED

1. Whether a foreign consul can intermeddle in the private litigation between two United States citizens.

2. Whether a federal appellate court can affirm a judgment when the petitioner has set forth the foundation of that judgment indicating it was a nullity.

3. Whether a federal appellate court by affirming a nullity can by so doing divest a U. S. citizen of any remedy against a foreign consul who intermeddled in the private litigation between that U. S. citizen and another U. S. citizen.

4. Whether a federal court, trial or appellate, can grant extra-territorial rights to a foreign consul.

5. Whether a federal court can establish a doctrine of a duality of citizenship and dual allegiance.

6. Whether a federal court can grant diplomatic immunity to a foreign consul when he was not acting in his official capacity.

7. Whether the U. S. Constitution, laws, and treaties contemplate that a U. S. citizen is barred from a remedy against a foreign consul who intermeddled in the private litigation between that U. S. citizen and another U. S. citizen.

8. Whether a foreign consul, who under international law is only a foreign mercantile agent, can interpose the shield of a foreign state to prevent having penalties visited upon him for his private wrongdoing to an American citizen.

9. Whether a federal appellate court can recite supposed facts unsupported by the record of the district court.

10. Whether a federal appellate court, when a foreign consul has given several versions of the case both to the district court and to that federal appellate court, can adopt one of those several versions in order to absolve the foreign consul for his private wrongdoing in intermeddling in the litigation between two U. S. citizens.

11. Whether a federal court can bar a U. S. citizen from any remedy against a foreign consul's private wrongdoing and thereby negate and nullify 28 U.S.C.A. section 1351, which expressly grants the district courts jurisdiction, exclusive of the courts of the States, of such a case.

12. Whether the ruling of a federal court can negate the oath of renunciation and allegiance, Immigration and Nationality Act, 8 U.S.C.A. section 1448(a).

13. Whether by its ruling a federal court can, in effect denationalize a U.S. citizen, so that citizen, when aggrieved by the private wrongdoing of a foreign consul, has no means of redress.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

A.) Constitution of the United States, Article III, Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls; * * *"

B.) Amendment V to the Constitution of the United States:

> "* * * nor be deprived of life, liberty, or property, without due process of law; * * *"

C.) Amendment XIV to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

D.) Immigration and Nationality Act, U.S. Code Annotated, Title 8, Section 1448. Oath of renunciation and allegiance:

> "(a) A person who has petitioned for naturalization shall, in order to be and before being admitted to citizenship, take in open court an oath (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; * * *"

E.) U. S. Code Annotated, Title 28, Section 1351. Consuls and vice consuls as defendants:

> "The district courts shall have original jurisdiction, exclusive of the courts of the States, of all actions and proceedings against consuls or vice consuls of foreign states."

STATEMENT OF FACTS.

This action was instituted by petitioner *pro se*, against Stephanos G. Rocanas, Consul of Greece, to recover damages resulting from his wrongful and intentional interference, obstructing or defeating the due course of public justice in the State courts, by writing and circulating or causing to be circulated, presented and filed repeatedly, through his collaborators, a letter dated December 7, 1959, directed "*To the Judges of the Superior Court of Cook County, Chicago, Illinois*", on behalf of a naturalized American citizen, defendant in certain law suits instituted by petitioner in the State courts. (App. 3-8, pars. 5-15; Rec. 4-9.)

The Complaint filed with Jury Demand, alleges with particularity the overt acts of the respondent (App. 4-8, pars. 6-7, 10-15; Rec. 4-9), adopted here by reference.

Count Two of the Complaint alleges facts showing that the respondent, Stephanos G. Rocanas, knew the spurious, fraudulent and false character of his said letter "*To the Judges of the Superior Court of Cook County, Chicago, Illinois*". (App. 9-10, pars. 1-3; Rec. 11-12.)

The Complaint also alleges that the respondent, in the acts therein stated, acted intentionally, wantonly, maliciously, fraudulently and corruptly for the purpose of hindering, obstructing or defeating the due course of public justice, and with intent to injure, oppress and intimidate the petitioner from enforcing his right to his legal remedies secured to him by the Constitutions and laws of the United States and of the State of Illinois. (App. 4-8, pars. 10-17; Rec. 5-10; App. 9-10, par. 3; Rec. 12.)

On January 25, 1962, a copy of a letter from the Greek Ambassador, typewritten, not certified, and attached to a letter from Abram Chayes, Legal Adviser for the Secretary of State, addressed to the District Court Judge, was filed. (App. 12-17; Rec. 24-26, 30-31.) *No notice and no copy was ever served on the petitioner.* (App. 43, par. 15(a), Rec. 78.) Petitioner moved to strike and expunge such documents, specifying the grounds, except the last paragraph in said Legal Adviser's letter (App. 43-45, pars. 15(a)(b)(c)(d)(e); Rec. 78-79), which states (App. 15, last part; Rec. 26):

> "In transmitting this note of the Ambassador of Greece to you, *the Department of State does not in any way intend to prejudge the legal issue as to whether or not the actions complained of were performed by the Defendant in his official capacity as Consul General of the Kingdom of Greece, or any other legal issue which may be before the court*, having in mind that such issues fall for determination or decision by the court." (Emphasis added.)

This pattern, violating the requirements of Orderly Due Process of Law and Rule 5(a)(d) of the Federal Rules of Civil Procedure and of Rule 6 of the Civil Rules of the District Court, was repeated on February 8, 1962, when a letter purporting to be from "Brian N. Smith, M.D.", addressed to the District Court Judge, was filed. *No notice and no copy was ever served on the petitioner.* (App. 18, 45, par. 16(a); Rec. 35, 79-80.)

On March 9, 1962, the respondent filed a motion to dismiss, or for judgment on the pleadings or for summary judgment. (App. 18-19; Rec. 39.) Attached to such motion are: his affidavit alleging that his Answer to the Complaint is true, except as to allegations on information and belief which he verily believes them to be true; a document labeled affidavit, signed by his attorney, John C. Gekas, containing matters *dehors* the record, self-serving

conclusions, interpretations, and argumentative allegations with impertinent and scandalous matter. (App. 19-24; Rec. 40, 41-46.) He alleges, *inter alia*, that the respondent Rocanas, "had no part in said proceedings whatsoever and no control over nor did he present the said exhibits as evidence in said cause". (App. 22; Rec. 44.) And in the following paragraph Gekas alleges "that a witness or a person who gives evidence or offers any document or affidavit in evidence at a hearing before a court of competent jurisdiction over the parties and the subject matter is absolutely privileged if the evidence presented is relevant and pertinent." (App. 23; Rec. 44-45.) Also attached is a copy of an Illinois Appellate Court Opinion in a case wherein the said John C. Gekas was defendant and had asserted "privilege" in the preparation, publication, circulation and filing of certain admittedly false and defamatory answers to written interrogatories, which under law are not pleadings and not privileged. It shows that there was no trial on the merits and no Answer to the Complaint. Such document, attached to and made part of respondent Rocanas' motion to dismiss, is only proof of his adoption, knowledge, approval, repetition and participation in the tortious and maleficent behavior pattern of the defendants in that case. (See Appendix, pp. 45-46, par. 17; Rec. 80-81.)

On the same day, March 9, 1962, the Answer of respondent Rocanas, to the Complaint was filed. He contests the jurisdiction of the Court, and alleges denials, conclusions and self-serving interpretations with argumentative allegations. (App. 25-32; Rec. 58-65.) He admits writing the said letter "*To the Judges of the Superior Court of Cook County, Chicago, Illinois*", "at the request of Major Con-

stantine D. Chapralis, and delivered the same to him"; alleges that he "had no control over it and of the use of said letter, whatsoever". (App. 28; Rec. 61.) He also alleges that "it was privileged evidence" and that he "was privileged in executing and delivering the said documents for the presentation before the court of justice of the State of Illinois". (App. 30, par. "11 to 16", last 10 lines; Rec. 62.) Respondent Rocanas further alleges that he never represented and does not represent now that the said "Major Constantine D. Chapralis" received a diploma from said military school or that he did not receive a diploma". (App. 31, last 6 lines; Rec. 64.)

Respondent attaches "Suggestions as to the meaning of the word Certificate" (2 pages). The document is signed by his attorney John C. Gekas. (App. 33; Rec. 67-68.) Another document labeled "Exhibit Y", attached to respondent's Answer, is an alleged translation by the said John C. Gekas, of Exhibit "B" which is attached to petitioner's Complaint. Such translation is dated March 9, 1961. (App. 33-34; Rec. 69.)

Petitioner filed his Counter-Affidavit with Jury Demand, and his Brief with supporting authorities. (App. 35-47, 47-59; Rec. 70-82, 83-93.) In his Counter-Affidavit, the petitioner denies respondent's alleged affirmative defenses and states facts with particularity, showing that the Court has jurisdiction of the respondent and the subject matter; that the respondent is not and could not be immune; that the Complaint states a good cause of action and that the pleadings raise issues of fact for a Jury to decide.

REASONS FOR GRANTING THE WRIT.

I.

The Court of Appeals by reciting supposed facts unsupported by the record has thereby avoided or evaded an important Federal constitutional question: Can a foreign consul intermeddle in the private litigation between two United States citizens? The Opinion of the Court of Appeals in this case, 311 F. 2d 36, at pages 37-38, implies that the local Greek consul, respondent, was intermeddling on behalf of a Greek national. Yet the record plainly indicates that the foreign consul was acting for a naturalized citizen of the United States (Chapralis) against another naturalized citizen of the United States (petitioner). (App. 3-4; Rec. 4-6; App. 36; Rec. 71-72.) And therefore the foreign consul was *not* acting in his official capacity.

> "It is apparent from an inspection of the record that the whole foundation of * * * the judgment which is in favor of the (respondent) is, to our judicial knowledge, *without any validity, force, or effect, and ought never to have existed.*" *Butler* v. *Eaton*, 141 U.S. 240, 35 L. Ed. 713, 714, 11 S. Ct. 985. (Emphasis added.)

In his appeal to the Court of Appeals petitioner set forth the foundation of the judgment of the District Court which indicated that judgment was void and a nullity, a finding without evidence; a finding without the petitioner being heard on the merits of his case. The judgment of the District Court was "not a judicial determination of his rights, and (was) not entitled to respect in any other tribunal." *Windsor* v. *McVeigh*, 93 U.S. 274, 23 L. Ed. 914, 916. Yet the Court of Appeals, disregarding the foundation of that judgment, proceeded to affirm

that nullity and by thus ruling the Court of Appeals, in a non-judicial determination, has barred a U. S. citizen from a remedy against a foreign consul who arrogantly intermeddled in the private litigation between that U. S. citizen and another U. S. citizen by directing and having circulated a letter "*To the Judges of the Superior Court of Cook County, Chicago, Illinois.*"

Such a ruling, in addition to being "a mere arbitrary edict, clothed in the form of a judicial sentence," 23 L. Ed. 914, 916—it also has the same effect as if the petitioner were made "* * * a stateless person—a person who * * * *has no rights as an American citizen* * * *.* 'Such individuals as * * * enjoy, in general, no protection whatever, and if they are aggrieved * * * they have *no means of redress* * * *.*' (Citing authority)." *Kennedy* v. *Mendoza-Martinez*, 83 S. Ct. 554, 563. (Emphasis added). The ruling of the Court of Appeals served to totally bar the petitioner, a U. S. citizen, not only from any remedy, but to deprive him of due process as well, guaranteed to him by the Fifth and Fourteenth Amendments.

The Opinion of the Court of Appeals grants to the respondent, a foreign consul, extra-territorial rights to intermeddle with and obstruct the due administration of justice, in behalf of a naturalized American citizen, thereby establishing a doctrine of a duality of citizenship and of dual allegiance. As this Court has said, "We have recognized the entanglements which may stem from *dual allegiance* * * *.*" Quoting from Mr. Justice Brennan, concurring, in *Kennedy* v. *Mendoza-Martinez*, 83 S. Ct. 554, 577. (Emphasis added.)

Such doctrines and entanglements must be resolved. Not to clarify them is to set up dangerous and misguiding precedents. As this country has gained a position as a

leader in world trade, so too has the number of foreign consuls increased. Where there were cities in generations past which had few if any foreign consuls, now they have numerous foreign consuls. Yet, unfortunately, there is no decision by the Supreme Court of the United States which would serve as a guidance both to U. S. citizens in such situations and to the foreign consuls themselves. Granting this petition and clarifying and resolving these issues of foreign consul-U. S. citizen conflicts would tend to act as a natural deterrent to those foreign consuls who mistakenly or as here, arrogantly, usurp, or have delegated, extra-territorial rights.

II.

The U. S. Constitution and laws have never been our yoke and rickshaw, but "both a shield and a sword." *Pollock* v. *Williams*, 322 U.S. 4, 8, 64 S. Ct. 792, 795. We are not to be weighed down by them but rather, uplifted. Therefore, a lower court decision that thus deprives a U. S. citizen of due process by giving respect in a judicial tribunal to a nullity—such a ruling can hardly present more fundamental constitutional questions, particularly by affirming a nullity when an American citizen can thereby be barred by his own country's national courts from seeking a redress against the intermeddling of a foreign consul acting on behalf of another American citizen. Then surely it can be said, "Of what avail are written constitutions, whose bills of right for the security of individual liberty have been written, too often, with the blood of martyrs shed upon the battle field and the scaffold, if their limitations and restraints upon power may be overpassed with impunity by the very agencies created and appointed to guard, defend, and enforce them; and that, too, with the sacred authority of law, not only compelling obedience, but entitled to respect? And how else can these principles of

individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. *It is the doctrine of absolutism, pure, simple and naked;* and of communism, which is its twin; the double progeny of the same evil birth." *Poindexter* v. *Greenhow*, 114 U.S. 270, 29 L. Ed. 185, 193. (Emphasis added.)

The petitioner, a U. S. citizen, was as surely and effectively divested of his citizenship without due process by the lower courts' decisions just as if he were, by despotic fiat, to be sent out of the country and denationalized.

The foreign consul gave several versions of the case to the district court and in the Court of Appeals he gave several still different versions of the case. The ruling of the Court of Appeals, by adopting one of those versions, is a judgment based on supposed facts unsupported by the record and constructs thereby a case different than that shown by the record of the district court. If a foreign consul can in this way make our courts subservient to his wishes, it sets him above the sovereignty of the United States and in conflict with that sovereignty, and in conflict with international laws and treaties. For a federal court to excite supposed facts unsupported by the record in order to absolve a foreign consul and bar a U. S. citizen from remedy against a foreign consul's intermeddling, is to "foreclose the exercise of constitutional rights by mere labels." *National Ass'n For Advance. Of Colored People* v. *Button*, 83 S. Ct. 328, 336.

Such a ruling nullifies 28 U.S.C.A. sec. 1351.

It is, by arbitrary edict, to open the floodgates to a virtual standing army of foreign consuls to intermeddle, at their pleasure, in the private litigation between U.S. citizens and to allow foreign consuls to subvert our courts.

The Court of Appeals "is a court of review, not a tribunal unbounded by rules. (They) do not sit like a kadi under a tree dispensing justice according to considerations of individual expediency." Justice Frankfurter's Dissent in *Terminiello* v. *City of Chicago*, 337 U.S. 1, 14, 69 S. Ct. 894, 899.

By ruling that petitioner's cases on diplomatic immunity were not in point, the Court of Appeals has affirmed that the respondent, a local Greek consul, was acting as a private wrongdoer. But the Opinion of that court thereby sets up riddles of unresolved federal questions of national and public significance and "Special and important reasons imply a reach to a problem beyond the academic or the episodic. This is especially true *where the issues involved reach constitutional dimensions*, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues *unless avoidance becomes evasion.*" *Rice* v. *Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74, 75 S. Ct. 614, 616, 99 L. Ed. 897. (Emphasis added.)

The Court of Appeals has therefore affirmed that a U.S. citizen, petitioner, is barred from a remedy against a foreign consul who intermeddled in the private litigation between that U.S. citizen and another U.S. citizen by directing and having circulated a letter "*To the Judges of the Superior Court of Cook County, Chicago, Illinois.*" And the Court of Appeals by treating that letter as evidentiary when the record clearly showed it was not, deprived peti-

tioner of due process guaranteed by the Fifth and Fourteenth Amendments.

> "Shall it be said, in the face of all this • • • that the courts cannot give remedy when the citizen has been deprived • • • without any lawful authority, without any process of law • • • If such be the law of this country, *it sanctions a tyranny* which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well regulated liberty and the protection of personal rights." *United States* v. *Lee*, 106 U.S. 196, 27 L. Ed. 171, 182. (Emphasis added.)

III.

The ruling of the Court of Appeals in this case sets up dangerous precedents which would tend to undermine the due administration of American justice. The ruling encourages foreign consuls to collaborate or conspire, at their pleasure, with a litigant who is a U. S. citizen, to direct or have circulated on behalf of that litigant, communications to the judges of local courts, to the detriment of another U. S. citizen who is an opponent in that litigation. Particularly is this so when both opponents in the litigation, being both of them naturalized U. S. citizens, happen to be descended from the same foreign country as the foreign consul.

The ruling encourages dual allegiance, yet the Supreme Court of the United States has said, "The United States has long recognized the general undesirability of *dual allegiances*. Since 1795, Congress has required any alien seeking American citizenship to declare 'that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject • • •' (Citing authority)." *Savorgnan* v. *United States*, 338 U.S. 491, 500, 70 S. Ct. 292, 297. (Emphasis added.)

The ruling of the Court of Appeals encourages and puts the stamp of judicial approval on the intermeddling of a foreign consul acting on behalf of a U. S. citizen who is an opponent in litigation with another U. S. citizen. The ruling therefore promotes a duality of citizenship. But an American citizen cannot "preserve for himself a duality of citizenship." 338 U.S. 491, 500.

To foster such meddling, impeding, obstructing is to cut away the standards of due and orderly judicial processes and to support our judicial system instead upon a doctrine of absolutism. "*The doctrine is not to be tolerated.* The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it." *Poindexter v. Greenhow*, 114 U.S. 270, 29 L. Ed. 185, 193. (Emphasis added.)

The ruling of the Court of Appeals subverts and negates the Immigration and Nationality Act, 8 U.S.C.A. section 1101 *et seq.* The ruling particularly subverts and negates 8 U.S.C.A. section 1448(a), Oath of renunciation and allegiance.

A foreign consul, who under international law is only a foreign mercantile agent, cannot interpose the shield of a foreign state to prevent having penalties visited upon him for his private wrongdoing to an American citizen. A foreign consul is in this country to promote commerce, not anarchy.

To bar a U. S. citizen from having a remedy in the national courts against such an interloping, intermeddling foreign consul would be to put a backward twist upon our Constitution and laws, and would be a total disregard of the historical background of that instrument. "*Of what avail are written constitutions* * * * if their limitations

and restraints upon power may be overpassed with impunity by the very agencies created and appointed to guard, defend, and enforce them. * * *?" *Poindexter* v. *Greenhow*, 114 U.S. 270, 29 L. Ed. 185, 193. (Emphasis added.)

To denationalize, in effect, a United States citizen right here *within his own land* could seldom be worse than to sandbag the doors of American justice to keep him out.

CONCLUSION.

For the reasons above stated it is respectfully submitted that the Petition for writ of certiorari be granted.

Respectfully submitted,

PETER S. SARELAS,
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APPENDIX A.

In the

United States Court of Appeals

For the Seventh Circuit

No. 13766 SEPTEMBER TERM, 1962 SEPTEMBER SESSION, 1962

PETER S. SARELAS,
Plaintiff-Appellant,

v.

STEPHANOS G. ROCANAS,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

December 21, 1962

Before DUFFY, CASTLE and SWYGERT, *Circuit Judges.*

SWYGERT, *Circuit Judge.* This is an action for damages against the Consul General of Greece in Chicago. It stems from a letter addressed by the consul "To The Judges of the Superior Court of Cook County, Chicago, Illinois," which stated that one Constantinos Dimitrios Chapralis, born in Greece, was, according to a certificate issued by the Greek Military School, registered in that school and that he graduated with the rank of 2nd Cavalry Lieutenant. Attached to the letter was the certificate of the Greek Military School, written in Greek, which contained the

same information. The letter and the attached document had been used by Chapralis as evidence in a prior suit brought by plaintiff in the Circuit Court of Cook County in which Chapralis was one of nineteen defendants. That suit arose out of an assault and battery on the plaintiff alleged to have been committed by the defendants including Chapralis.[1]

In the instant action plaintiff alleges that the consul acted "intentionally, wantonly, maliciously, fraudulently and corruptly for the purpose of impeding, hindering, obstructing or defeating the due course of public justice and with intent to injure, oppress and intimidate the plaintiff from enforcing his right to (his) legal remedies . . ." The defendant filed a motion to dismiss or for summary judgment. The District Court dismissed the action after considering the pleadings, affidavits filed by both parties, and two letters, one from the Secretary of State of the United States to the District Court and the other from the Ambassador of Greece to the Secretary of State.

It is indisputably clear from the record in this case that the defendant was acting within the scope of his authority and duties as consul when he furnished the letter in question with its attachment to one of the parties in the state court action. The letter was used as an evidentiary exhibit in the trial of a law suit. The trial judge, before dismissing the instant case, had before him not only the affidavits which demonstrate the purpose for which the document in

[1] It would appear from the oral argument that the alleged assault and battery, the subject of the civil suit mentioned, arose from the forceful ouster of the plaintiff in this suit as president of a local Greek professional society. He was ousted ostensibly for his part in expelling Chapralis from the society apparently for not meeting the membership qualifications.

question was used, but also a communication from the Secretary of State which pointed out to the court that:

> "Among the traditional rights of consular officers, even in the absence of applicable treaty provisions, is the right to communicate with local authorities to protect the interests of their countrymen and, if permissible under local law, to appear in court on their behalf. In accordance with the law of the sending state, consular officers may also issue certificates attesting to the personal status of nationals of that country, and may authenticate documents for use as evidence in the courts of the receiving state."

The law is settled that consular officials of foreign states are immune from civil suit when the suit is based upon acts falling within the scope of their authority and which involve the performance of their official duties. The cases dealing with diplomatic immunity are not in point.

The District Court was correct in dismissing the action.

The judgment is AFFIRMED.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B.

In the

United States Court of Appeals

For the Seventh Circuit

Chicago 10, Illinois

Friday, December 21, 1962

Before

Hon. F. Ryan Duffy, *Circuit Judge*
Hon. Latham Castle, *Circuit Judge*
Hon. Luther M. Swygert, *Circuit Judge*

Peter S. Sarelas, *Plaintiff-Appellant,* No. 13766 vs. Stephanos G. Rocanas, *Defendant-Appellee.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX C.

In the

United States Court of Appeals

For the Seventh Circuit

Chicago 10, Illinois

Friday, January 18, 1963

Before

Hon. F. Ryan Duffy, *Circuit Judge*
Hon. Latham Castle, *Circuit Judge*
Hon. Luther M. Swygert, *Circuit Judge*

Peter S. Sarelas, *Plaintiff-Appellant.* vs. Stephanos G. Rocanas, *Defendant-Appellee.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 13766	

It Is Ordered by the Court that plaintiff-appellant's petition for rehearing of the above entitled cause be, and it is hereby, Denied.